

GUIDELINE SERIES

QAQPS NO. 1.2-005A (Revised)

INTERIM GUIDELINE

REVISIONS TO STATE IMPLEMENTATION PLANS -
PROCEDURES FOR APPROVAL/DISAPPROVAL ACTIONS

APRIL 1975



U.S. ENVIRONMENTAL PROTECTION AGENCY

Office of Air Quality Planning and Standards

Research Triangle Park, North Carolina

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LIST OF ABBREVIATIONS

OAWM	Office of Air and Waste Management
OTLUP	Office of Transportation and Land Use Policy
OAQPS	Office of Air Quality Planning and Standards
CPDD	Control Programs Development Division
OPMO	Office of Program Management Operations
OE	Office of Enforcement
DSSE	Division of Stationary Source Enforcement
MSED	Mobile Source Enforcement Division
OGC	Office of General Counsel
OPM	Office of Planning and Management
MOD	Management and Organization Division
RO	Regional Offices
RA	Regional Administrators
TCP	Transportation Control Plan

REVISIONS TO STATE IMPLEMENTATION
PLANS - PROCEDURES FOR APPROVAL/DISAPPROVAL ACTIONS

1.0 INTRODUCTION

1.1 Purpose

The purpose of this guideline is two fold. First, to update the June 1, 1973 guidelines (OAQPS No. 1.2-005) which outlined the procedures for approval/disapproval of State submittals to State Implementation Plans (SIPs). Second, to outline the procedures for the preparation of rulemaking actions which originate with the Regional Office.

The administrative procedures for approval/disapproval of revisions to State Implementation Plans were updated on June 1, 1973. Since that date, several changes in the procedures have been made. Court orders have required that State submissions be proposed for public comment before final EPA approval/disapproval action may be taken, and have raised the issue of EPA non-action on correctly submitted State revisions. The Administrator has delegated authority to the Regional Administrator to sign proposed rulemaking packages involving State submitted SIP action. Also, certain changes have been made in the procedure for approval/disapproval of proposed plans which contain transportation control measures.

Procedures for the preparation of rulemaking actions which originate with the Regional Office have not been discussed in the guidelines heretofore. This situation usually develops when EPA issues a call for a plan revision and the State fails to respond. These procedures have

been added in Section 7 in an attempt to cover review and processing for all R.O. Federal Register preparations regarding SIPs.

1.2 Overview

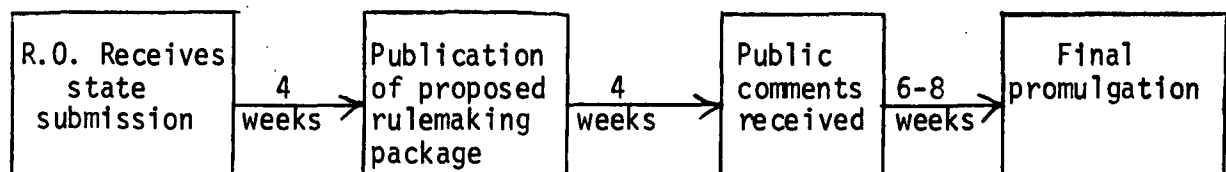
These procedures shall apply to all SIP related actions that involve a change or modification in the approval of State Implementation Plans (control strategy, emergency episode, resources, etc.) except compliance type actions (i.e., compliance schedules, enforcement orders, etc., which are covered under general enforcement procedural guidelines issued by the Office of Enforcement and General Counsel, Division of Stationary Source Enforcement, OEGC/DSSE, See guideline S-5, Procedures for Review and Approval of Compliance Schedules Pursuant to 40 CFR § 51.6). However, any compliance schedule, variance, postponement request or action that extends the date of compliance with emission regulations beyond the ambient air quality standard attainment date in the applicable SIP, or makes a change in the allowable emission rate for a source(s), is considered an SIP revision since such actions may affect the attainment of air quality standards. The processing and evaluation of such actions will be handled in accordance with these guidelines. Since State submissions involving transportation control measures will be processed differently than those submissions not involving such measures, Section 6 has been added to explain this procedure. The major difference in review procedure is that for transportation control plans, different groups within the Office of Air and Waste Management (OAWM) and the Office of Enforcement (OE) will review the Regional Office Federal Register package.

Section 7 has been added to explain the procedures for the preparation of rulemaking actions which originate with the Regional Office.

The Regional Offices are responsible for direct interface with the State in matters involving the development and submittal of SIP revisions where the revision originates with the State. The Regional Office will review and summarize the record of hearings conducted by the State, and distribute the submittals to the EPA headquarters offices for appropriate review and comment.

Thus, the Regional Offices are responsible for seeing that all material germane to the SIP action or matter at hand has been received from the States and is circulated as needed for the review, evaluation, recommendations and action. The OAWM in Washington will serve as a focal point for final processing actions. This will include the coordination and arrangement of the Administrator's briefing, any external coordination, Federal Register publications, and preparation of materials for national news releases.

It is estimated that a typical state submittal which contains no major deficiencies will require approximately four months to complete Federal Register action. The following flow chart gives an estimate of the time lapse from Regional Office reception of State submission to final promulgation.



In summary, the procedure normally involved in processing State submitted SIP submittals can be listed as follows:

- a. R.O. receives State submission, performs cursory review, and immediately prepares proposed rulemaking package. This notice summarizes the content of the State submission which EPA is considering as an addition to the SIP and invites public comment within 30 days (see section 4).
- b. R.O. forwards the proposal to the Federal Register for publication with copies to CPDD, DSSE*, MSED* and OTLUP*.
- c. R.O. evaluates plan revision and public comments, and prepares final Federal Register package (see sections 5 and 6).
- d. R.O. forwards draft of final Federal Register package to CPDD, DSSE, MSED* and OTLUP* for review and concurrence (see sections 5 and 6).
- e. After non-concurrences, if any, are resolved, the final Federal Register package is submitted through OAWM to the Federal Register for publication.

2.0 SPECIAL ISSUES

2.1 Division of Authority

A division of authority regarding policy-making must be established to resolve non-concurrence during interagency review when the parties involved are unable to reach agreement. This division is necessary to

* Whether or not the submission includes transportation controls determines who receives copies. See sections 4, 5, and 6.

provide an orderly procedure for handling such issues and at the same time provide each organization the opportunity to be heard. The location of basic authority on SIP decisions is as follows:

<u>Primary Responsibility for:</u>	<u>Office</u>
Matters of national policy and precedent	OAWM
Legal/procedural questions	OGC
Regulatory/non-regulatory questions, where policy and precedent has been established and Local Policy issues	Regional Offices

In instances where differences cannot be resolved, the final Federal Register package will be prepared by the Office having primary responsibility. The position and recommendations of the non-concurring office(s) will be presented with full TAB attachments to the action memorandum as submitted by the non-concurring office(s).

2.2 Delegation of Authority to the Regional Administrator to Sign Proposed Rulemaking Packages

On May 30, 1974 (39 FR 18805) the Administrator delegated authority to the Regional Administrator to sign proposed rulemaking packages involving State submitted SIPs. This authority is limited to proposed rulemaking packages in which the State proposal is presented for the 30 day public comment period.

2.3 Court Decisions

A court decision requires that EPA provide for public comment prior to approval/disapproval actions on SIP actions submitted by States,

and that an official statement be made in the Federal Register regarding all correctly submitted state submissions, even if the submission is unapprovable or contains major deficiencies.

2.3.1 Opportunity for Public Comment - In response to the court decisions, EPA will provide an opportunity for public review and comment on submissions by States of changes and additions to the SIP. This opportunity for public review and comment shall be provided through publication of a notice of proposed rulemaking in the Federal Register (see sections 3 and 4).

2.3.2 Requirements for Approval/Disapproval Actions - The Environmental Protection Agency has been criticized for failure to take action on State submittals and revisions to SIP's which include unapprovable regulations and procedures. This criticism was a major issue in a court decision [NRDC v. EPA, 5 ERC 1879 (1st Cr., 1973)], and has been referred to in subsequent court decisions. Although these cases do not hold that EPA must take Federal Register action on all aspects of State submissions, serious constitutional problems could arise in enforcement actions if EPA fails to take this approach. A basic tenet of due process of law is that those covered by a law must be able to discern clearly what is required of them and what is not.

Thus, for every State submittal which is transmitted in accordance with EPA's procedural requirements, EPA must disapprove those portions of the submission which are substantively deficient through Federal Register action.

3.0 FEDERAL REGISTER PACKAGES (When States submit proposed changes in SIP)

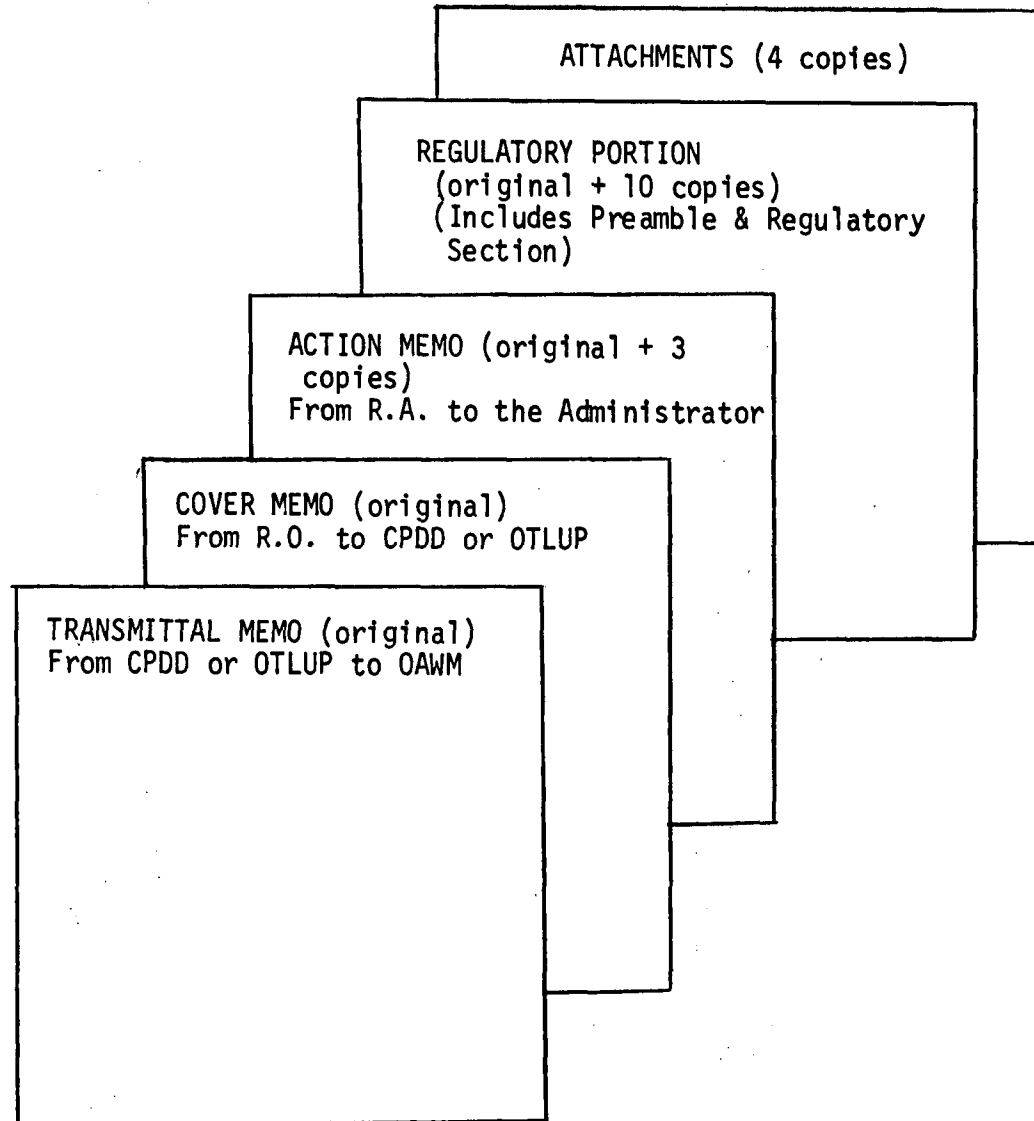
3.1 Content

These Federal Register actions have two stages. They consist of the proposed rulemaking stage, in which public comment is solicited on the proposed action, and the final rulemaking stage in which the action is promulgated. The proposed rulemaking package normally includes two components, the cover memorandum and the notice of proposed rulemaking which simply states that certain specified material has been received from a state as a proposed amendment to the SIP and that it is available for public comment. An example of the notice of proposed rulemaking is presented in Appendix A. The final rulemaking package may contain as many as five components. Figure 1 lists in sequence the possible components of the final rulemaking package and the number of copies of each component that must be prepared by the Regional Office. The cover memo, action memo, preamble and regulatory section, and attachments are prepared by the Regional Office. The transmittal memo is prepared by the reviewing office. Section 5 discusses the preparation of the final rulemaking package. Appendices B, D, and E present examples of the transmittal memo, preamble and regulatory section, respectively. For guidance in writing action memorandums, the Assistant Administrator for Planning and Management at the request of the Administrator, has developed an Outline for Action Memorandum which has been included as Appendix C.

It should be emphasized that many approval/disapproval actions result in lawsuits. Thus, it is necessary not only to explain EPA's actions fully in the Federal Register preamble, but also to prepare a detailed "Rationale for Approval/Disapproval" of the State's submission showing EPA's analysis of how the submission meets all of the substantive and procedural requirements for approval. The Rationale may appear in two forms. It could appear in the form of an evaluation report (see Appendix F) where EPA presents a detailed review of the State submittals with regard to applicable portions of the 40 CFR 51 regulations. It could appear in the form of a technical support document with supportive calculation where EPA developed regulations are being promulgated, or where certain calculations are required in evaluation of a State submission.

A copy of the Federal Register Handbook on Document Drafting, January 1975, should be obtained by all personnel involved in the preparation of Federal Registers.

Figure 1. Federal Register Package Components - Final Rulemaking



3.2 Procedural Problems - When State Submittal is Not Approvable

If the State submittal contains major deficiencies, the Regional Office will attempt to negotiate with the State to correct these deficiencies. In such cases, the Regional Offices shall notify the State by letter of such deficiencies within 15 days after receipt of plans. This notification shall explain why the submission is unapprovable and what, if any, corrective action may be necessary. The State shall be allowed 15 days to respond to this letter. If the negotiations are successful and the major deficiencies are corrected, the Regional Office shall proceed to section 4.0 Preparation of Proposed Rulemaking Packages. If the negotiations are unsuccessful (the State will not revise or withdraw the submission), the deficiencies must be disapproved under Part 52 in the final rulemaking package, and corrective regulations proposed if necessary. Corrective regulations may be necessary if the proposed changes in the State submission render a regulatory portion of the SIP unapprovable.

4.0 PREPARATION OF PROPOSED RULEMAKING PACKAGES

This Section and Section 5 describe the procedures for proposal and promulgation of State submitted changes to SIP's which do not include transportation controls (TCPs). The flow chart in Figure 2 outlines this procedure. Section 6 describes the procedures to be followed when

the State submission consists of TCPs. If both TCP and non-TCP provisions are included in the State submission, the R.O. must make a decision as to which provision is the most significant. See section 6.1. Section 7 discusses the procedure for preparation of R.O. originated rulemaking packages.

4.1 Proposed Federal Register Package

The Regional Office shall be responsible for preparing a Federal Register proposal which announces receipt of the revision to the SIP, describes the content and significance of the State submission, provides for a 30-day public comment period, identifies places where the plan can be examined, and stipulates to whom comments should be addressed. This notice shall be signed by the Regional Administrator.

The general format of the memorandum and notice of proposed rulemaking is illustrated in Appendix A. The notice should adequately describe the content of the proposed revision so that interested parties can determine the scope and impact of the proposal, then, if further detail is desired, the plan can be reviewed at the identified locations. It is important to prepare the proposal as soon as possible after reception of the State Submission to facilitate timely action.

The Regional Office shall mail the proposed rulemaking package to the Federal Register through the Office of Planning and Management, Management and Organization Division (OPM-MOD), (Attention: Mr. James Parker, Waterside Mall (PM-213), Room 411B, 401 M Street, S.W., Washington, D.C. 20460). The package shall include the original Federal Register notice (double spaced with pages numbered at the bottom) and eight copies. Two of the copies shall contain the statement, "Certified to be a true copy of the original" typed at the bottom of the signature page. Additional copies of the proposed rulemaking Federal Register and a copy of the entire State submission shall be forwarded to:

- a. Mr. Jean Schueneman, Director, Control Programs Development Division, OAQPS, Research Triangle Park, N.C. 27711, for review and inclusion in the official SIP files.
- b. Ms. Rubye Mullins, Freedom of Information Center, EPA, A-107, 401 M Street, S.W., Washington, D.C. 20460 for public availability at headquarters.
- c. Mr. Richard Wilson, Director, Division of Stationary Source Enforcement, OEGC, Waterside Mall, 1125B-West Tower, 401 M Street, S.W., Washington, D.C. 20460.
- d. Cognizant State and local air pollution control agencies (State and local agencies should get copies of the preamble and regulatory sections. It is not necessary for them to be sent a copy of the State submission.)

Messrs. Schueneman and Wilson shall also receive a copy of the summarized record of the testimony from the State public hearings.

Once the proposed rulemaking package has been received by OPM-MOD (James Parker), it will be forwarded directly to the Federal Register without further review or delay. It is expected that these actions will appear in the Federal Register in 5 to 10 working days after receipt by Mr. Parker. If you have any questions on the status of a particular package, please call Mr. Parker at (202) 755-0830.

In summary, the following information should be included in the proposed Federal Register notice:

- a. An identification of the plan under consideration.
- b. A summary of the action or important aspects of the plan. Describe any court orders requiring the revisions.
- c. Identify places where the plan can be examined and periods of availability for review. As a minimum, this will include the offices or cognizant State and local air pollution control agencies, including State district offices; the EPA Regional Office, and the Freedom of Information Center in Washington, D.C. 20460.
- d. Identify the comment period and to whom comments shall be submitted.

4.2 Public Advertisement

When the State submittal is of a more important or controversial nature, the Regional Office will summarize the information included in the Federal Register notice and make this information available as a news release to newspapers of general circulation throughout the area affected by the proposed plan. The decision as to what constitutes a more important or controversial issue will be made by the Regional Office. The results of the State public hearings may be used as a guide. If little

or no public interest in the revision was exhibited at the State's public hearing, then the Federal Register publication alone would probably constitute adequate notice. If the revision was a highly controversial one and/or one which had undergone modifications subsequent to the public hearing, a public notice should be prepared and published in newspapers of general circulation in the affected areas. The public notice should be published as soon as possible after the Federal Register notice has been published. Caution must be exercised in preparing the notice to assure consistency with the Federal Register with regard to period of comment, plan content, etc.

4.3 Handling Public Comments

Receipt of any comments shall be promptly acknowledged (for example, see Appendix G). A copy of all comments will be forwarded to Ms. Ruby Mullins and Mr. Jean Schueneman OAQPS/CPDD (specify date and page of Federal Register referred to; e.g., XX FR XXXX, X/X/XX) at the previously mentioned addresses. The Regional Office will take substantive comments into proper consideration as to how they impact on approval/disapproval and proposal actions. In preparing the final rulemaking Federal Register package, these public comments must be discussed in the preamble to the final regulations to be published in the Federal Register package, along with EPA's reaction to such comments (see Appendix D).

5.0 PREPARATION OF FINAL RULEMAKING PACKAGES

5.1 Intra-agency Review

As previously noted in Section 4.1, copies of the State submission will be sent by the Regional Office to CPDD (J. Schueneman) and DSSE (R. Wilson) along with copies of the proposed rulemaking package prepared

by the Regional Office. CPDD and DSSE will prepare comments, if they have any, or if requested to do so by the Regional Office. All legal questions which have not been resolved through the appropriate Regional Counsel's office should be referred to the Air Quality Noise and Radiation Division (EG-333), Office of General Counsel, Waterside Mall, Washington, D.C. 20460 (202-755-0744).

5.2 Public Comments in Final Rulemaking Package

Public comments will be received by the Regional Office and a summary of these comments will be included and discussed in the preamble of the final Federal Register package. If no comments were received, it must be so noted. CPDD and the Freedom of Information Center shall receive copies of the public comments in order to update their SIP files. CPDD will not render any review of such comments unless a policy or procedural issue is raised or it is requested to do so by the Regional Office. (See Appendix D, pages D-3 and D-4 for an example of discussion of public comments in the Federal Register preamble).

5.3 Final Federal Register Package

After the Regional Office has received input from the reviewing groups, if any, and summarized public comments, it shall prepare a draft final Federal Register rulemaking package and telecopy or mail it to CPDD and DSSE within 21 days of the end of the public comment period. The "Rationale for Approval/Disapproval" (technical support document or evaluation report) shall also be included in this submission.

CPDD and DSSE will review the Federal Register package supported by the "Rationale", and relate their concurrence or non-concurrence to the Regional Office by telephone within 5 days. This is to be confirmed in writing by CPDD or DSSE by a memorandum to the Regional Office, with a copy to other concerned offices. In the case of nonconcurrence which cannot be settled through negotiation on the telephone (expected to be very few cases), the nonconcurring group will have 14 days from the day of package receipt to prepare the necessary background information and justification for nonconcurrence. This information will be forwarded to the Regional Office with a copy to the other involved office(s). Every attempt should be made to develop a mutually agreed upon position. This may require a meeting of the parties concerned to thoroughly discuss the issues and alternative actions. If mutual concurrence cannot be attained, the final rulemaking package will be prepared by the office having primary responsibility. The position and recommendations of the nonconcurring office(s) will be presented with full TAB attachments to the action memorandum as submitted by the nonconcurring office(s).

Having received input from the reviewing groups and having evaluated and summarized public comments, the Regional Office next prepares the final Federal Register rulemaking package. As discussed in Section 3.0, the package will contain the following:

- cover memo - original
- action memo - original and 3 copies
- regulatory portion - original and 10 copies
- attachments (rationale) - 4 copies

The regulatory portion (double spaced with pages numbered at the bottom) actually appears in the Federal Register and consists of the preamble and regulatory section. Two copies of the regulatory portion shall contain the statement "Certified to be a true copy of the original" typed at the bottom of the last page of the preamble under the Administrator's signature. The package shall be forwarded to OAQPS/CPDD with a copy of each component to OE/DSSE. OAQPS will review the package and forward it to OAWM (Attn: Ms. Cathy Thompson, Office of Program Management Operations (OPMO), Waterside Mall, Room 943-West Tower, 401 M Street, Washington, D.C. 20460) which will coordinate headquarters review. If significant comments and recommendations are received from this review, OPMO will transmit such information to the appropriate Regional Office, CPDD, and DSSE. Any proposed changes will be reviewed by CPDD and DSSE and applicable comments will be phoned to the Regional Office within three (3) working days of receipt from OPMO and confirmed by memorandum transmitted by telecopy or mail as appropriate. The revised error free Federal Register package will be prepared in accordance with the before mentioned procedure in this section for final rulemaking packages.

After the package has been reviewed and the initial concurrences have been obtained from CPDD and DSSE, the R.O. will transmit a copy of the "Rationale for Approval/Disapproval" and any other attachments, to the Freedom of Information Center so that they will be available to the public immediately upon promulgation. A cover memorandum shall be included with the "Rationale" which clearly explains its purpose.

After the package is published in the Federal Register, the Regional Office shall transmit a copy of all the SIP plan change(s) approved therein to the Freedom of Information Center at the before mentioned address if portions of the State proposal have been disapproved. If the State proposal was approved in its entirety, the R.O. must inform the Freedom of Information Center that the copy of the State proposal which it received via the proposed rulemaking action represents the approved change to the SIP. The SIP plan changes shall be attached to a memorandum which clearly denote the Federal Register to which they pertain and the date on which the Federal Register was published.

6.0 TRANSPORTATION AND LAND USE CONTROLS

6.1 Introduction

The Office of Transportation and Land Use Policy (OTLUP) will coordinate all Federal Register action regarding transportation controls (TCPs). Indirect source regulations and air quality maintenance plans shall be coordinated through CPDD. In the event these proposals include TCP related actions, OTLUP and MSER will be forwarded a copy of the proposal and the State submittal for their review. The procedure for processing TCP related revisions parallels that employed for processing of other revisions as described in Sections 4.0 and 5.0. Sections 6.2 and 6.3 discuss this procedure. A separate flow chart (Figure 3) has been included to summarize the review and promulgation procedures for these proposals.

Where plan supplements contain both TCPs and non-TCPs, the Regional Office must make a decision as to which provision is the most significant. If the TCP portion is the most significant, OTLUP would be responsible for final review of the promulgation. If not, CPDD would be responsible for final review. In either case, DSSE would be included in the concurrence-nonconcurrence step to review the stationary source control aspects of the submission.

6.2 Proposed Rulemaking Package

After the proposal has been submitted by the State, the Regional Office shall prepare a notice of proposed rulemaking as described in Section 4. The Regional Office shall forward the proposed rulemaking package (cover memorandum and notice of proposed rulemaking) directly to James Parker, (OPM-MOD) at the address given in Section 4.2. The package shall include the original Federal Register notice (double spaced with pages numbered at the bottom) and eight copies. Two of the copies shall contain the statement, "Certified to be a true copy of the original" typed at the bottom of the last page.

A copy of the proposed rulemaking Federal Register package and a copy of the state revision shall be forwarded to:

- a. Mr. John L. Hiding, Director, Office of Transportation and Land Use Policy (AW-443), Room 935, Waterside Mall West, 401 M Street, Washington, D.C. 20460.
- b. Mr. Jean J. Schueneman, Director, Control Programs Development Division, Research Triangle Park, N.C. 27711, for review and inclusion in the official SIP files.

- c. Ms. Rubye Mullins, Freedom of Information Center, EPA, Room 232, 401 M Street, S.W., Washington, D.C. 20460, for public availability at headquarters.
- d. Mr. Norman Shutler, Director, Division of Mobile Source Enforcement, Waterside Mall, EG-340, 401 M Street, S.W., Washington, D.C. 20460.
- e. Cognizant State and local air pollution control agencies (state and local agencies should get copies of the preamble and regulatory sections. It is not necessary for them to be sent a copy of the state submission.)

Messrs. Hiding, Schueneman, and Shutler shall also receive a copy of the summarized record of the testimony from the State public hearings.

In regard to public advertisement of the proposed rulemaking package and the evaluation of public comments, procedures outlined in Sections 4.2 and 4.3 apply. A copy of the public comments shall be forwarded to John Hiding in addition to those persons listed in Section 4.3.

6.3 Final Rulemaking Package

The final rulemaking package shall be prepared in accordance with Section 5. The major difference in procedures is the groups within OAWM and OE that review the package once the Regional Office has prepared it. OTLUP, MSED, and CPDD are responsible for the concurrence, nonconcurrence reviews.

6.3.1 Intra-agency Review - This procedure parallels that described in Section 5.1. As discussed in Section 6.2, state submissions will be forwarded by the Regional Office to OTLUP (John Hiding), CPDD (Jean

Schueneman), and MSED (Norman Shutler) along with copies of the proposed rulemaking package. OTLUP, CPDD and MSED will prepare comments if they have any or if requested to comment by R.O. and send them to the R.O. with copies to the other reviewing offices. All legal questions which have not been resolved through the appropriate Regional Counsel's office should be referred to the Air Quality, Noise and Radiation Division (EG-333), Office of General Counsel, Washington, D.C. 20460 (202-755-0744).

6.3.2 Public Comments in Final Rulemaking Package - This procedure parallels that described in Section 5.2. Public comments will be received by the Regional Office and a summary of these comments will be included and discussed in the preamble of the final Federal Register package. OTLUP, CPDD, and the Freedom of Information Center shall receive copies of the public comments in order to update their SIP files. OTLUP and CPDD will not comment on the public comments unless a policy or procedural issue is raised or they are requested to do so by the Regional Office.

6.3.3 Final Federal Register - This procedure parallels that described in Section 5.3. After the Regional Office has received input from the reviewing groups, if any, and summarized public comments, it shall prepare a draft final Federal Register rulemaking package and telecopy or mail it along with the "Rationale for Approval/Disapproval" to OTLUP, CPDD, and MSED within 21 calendar days of the end of the public comment

period. OTLUP, CPDD, and MSED will review the Federal Register package and relate their concurrence or nonconcurrence to the Regional Office by telephone within 5 days. This is to be confirmed in writing by OTLUP, CPDD, and MSED by a memorandum to the Regional Office, with a copy to other concerned offices. In the case of nonconcurrence which cannot be settled through negotiation on the telephone (expected to be very few cases), the nonconcurrence group will have 14 days from the day of report receipt to prepare the necessary background information and justification for nonconcurrence. This information will be forwarded to the Regional Office with a copy to the other involved office(s). Every attempt should be made to develop a mutually agreed upon position. This may require a meeting of the parties concerned to discuss the issues and alternative actions. If mutual concurrence cannot be attained, the final rulemaking package will be prepared by the office having primary responsibility. The position and recommendations of the nonconcurring office(s) will be presented with full TAB attachments to the briefing document as submitted by the nonconcurring office(s).

Having received input from the reviewing groups and having evaluated and summarized public comments, the Regional Office next prepares the final Federal Register rulemaking package in error free copy.

As discussed previously, the package contains the following:

cover memo - original

action memo - original and 3 copies

regulatory portion - original and 10 copies

attachments (rationale) - 4 copies

The regulatory portion (double spaced with pages numbered at the bottom) actually appears in the Federal Register and consists of the preamble and regulatory section. Two copies of the regulatory portion shall contain the statement "Certified to be a true copy of the original" typed at the bottom of the last page under the Administrator's signature. The package shall be forwarded to OAWM/OTLUP with a copy of each component to OAQPS/CPDD and OE/MSED. OTLUP will review the package and forward it to OAWM/OPMO which will coordinate headquarters review. If significant comments and recommendations are received from this review, OAWM will transmit such information to the appropriate Regional Office, OTLUP, CPDD, and MSED. Any proposed changes will be reviewed by OTLUP, CPDD, and MSED and applicable comments will be phoned to the Regional Office within three (3) working days of receipt from OPMO and confirmed by memorandum transmitted by telecopy or mail as appropriate. The revised error free Federal Register package (original and ten (10) copies) will be prepared in accordance with the before mentioned procedure for final rulemaking packages.

After the package has been reviewed and the initial concurrences have been obtained from OTLUP, CPDD, and MSED, the R.O. will transmit a copy of the "Rationale for Approval/Disapproval"

and any other attachments to the Freedom of Information Center so that they will be available to the public immediately upon promulgation. A cover memorandum shall be included with the "Rationale" which clearly explains its purpose.

After the package is published in the Federal Register, the Regional Office shall transmit a copy of all the SIP plan change(s) approved therein to the Freedom of Information Center at the before mentioned address. If the state proposal was approved in its entirety, the R.O. must inform the Freedom of Information Center that the copy of the State proposal which it received via the proposed rulemaking action represents the approved change to the SIP. The SIP plan changes shall be attached to a memorandum which clearly denotes the Federal Register to which they pertain, and the date on which the Federal Register was published.

7.0 PROCEDURE FOR PREPARATION OF SIP REVISIONS ORIGINATED BY THE REGIONAL OFFICE

7.1 Introduction

The "Guidelines for Determining the Need for Plan Revisions to the Control Strategy Portion of the Approved SIP," OAQPS No. 1.2-011, explains the rationale EPA applies in determining when to call for a plan revision. Once the plan revision has been requested, the procedures for evaluation of the subsequent State submittal and preparation of the required Federal Register actions are discussed herein in Sections 4, 5, and 6. In the case where a negative response or where no letter of intent to submit the requested SIP revision is received

from the State, the Regional Office must take action in a timely fashion to propose corrective regulations.

7.2 Proposal of Corrective Regulations

If the proposed Federal Register action is prepared by the R.O. to satisfy the requirements for the plan revision, it must be signed by the Administrator. Thus, full concurrence by the appropriate reviewing offices which may include all of the following will be necessary: OTLUP, CPDD, MSSED, and DSSE. The proposal shall be submitted to the Administrator through OAWM, by procedures similar to those given in Sections 5 and 6 for final rulemaking actions. These procedures are summarized as follows:

Proposed Rulemaking

- a. State fails to submit requested revision.
- b. Regional Office prepares draft of proposed rulemaking and circulates for comment and review to CPDD, DSSE, (MSSED and OTLUP if regulation requires TCP). The proposal shall explain why it is being presented, propose regulations to implement the necessary plan revision, and indicate that public hearings will be held. The time and place of the public hearings shall be announced in the Federal Register after publication of the proposed rulemaking action. Written comments shall be accepted until the date of the hearings.
- c. If the Regulation proposed by EPA would significantly affect emission control regulations, or the enforcement thereof; or

would have significant national policy implications (i.e., establish a precedent), a more complete review is required. This might include steering committee or interagency review. The necessity for this review shall be determined through consultation between the R.O. and OAWM. These reviews shall be coordinated through the appropriate section of OAWM (CPDD, OTLUP) and OE (DSSE, MSSED).

- d. R.O. forwards final draft of proposed rulemaking package for concurrences to the appropriate reviewing groups which are CPDD and DSSE for TCP actions; and are OTLUP, CPDD, and MSSED for TCP actions.
- e. R.O. prepares final proposed rulemaking package (including rationale), submits original and ten copies to CPDD or OTLUP for final review as appropriate. A copy of the proposed rulemaking Federal Register package along with the related technical support document shall be forwarded to the following:
 - i. Freedom of Information Center, EPA, A-107, 401 M Street, S.W., Washington, D.C. 20460 for public availability at headquarters.
 - ii. Cognizant State and local air pollution control agencies (State and local agencies should get copies of the preamble and regulatory sections. It is not necessary for them to be sent a copy of the State submission).
 - iii. For non-TCP actions - DSSE.
 - iv. For TCP actions - MSSED.

- f. OTLUP or CPDD forwards to OAWM for final review and concurrences.
- g. OAWM obtains the necessary final concurrences from OE, OGC, and OPM.
- h. Administrator's signature.

7.3 Final Federal Register Rulemaking

Proceed as described in Sections 5 and 6.

Appendix A

Notice of Proposed Rulemaking

ENVIRONMENTAL PROTECTION AGENCY

(40 CFR Part 52)

APPROVAL AND PROMULGATION OF STATE IMPLEMENTATION PLANS - MARYLAND

Notice of Proposed Rulemaking: Proposed Plan to Achieve
Secondary Standards for Maryland

On May 31, 1972 (37 FR 10842), pursuant to section 110 of the Clean Air Act and 40 CFR Part 51, the Administrator granted an 18-month extension for submission of a plan to attain and maintain the secondary standard for sulfur oxides in the Metropolitan Baltimore Intrastate Region. On July 31, 1973, the Governor of Maryland submitted the plan as required.

The Administrator hereby issues this notice setting forth the Maryland Plan for Implementation of the Secondary Standards for sulfur oxides in the Metropolitan Baltimore Intrastate Region as proposed rulemaking, and advises the public that comments may be submitted on whether the control strategy should be approved or disapproved as required by section 110 of the Clean Air Act. Only comments received within 30 days from the publication of this notice will be considered. The Administrator's decision to approve or disapprove the plan is based on whether it meets the requirements of section 110(a)(2)(A)-(H) and EPA regulations in 40 CFR Part 51.

The proposed plan does not alter or supplement the present Maryland regulations for sulfur dioxide. Rather, the plan is submitted to demonstrate the implementation and enforcement of existing Maryland

regulations in the Metropolitan Baltimore Intrastate Region will be sufficient to achieve the secondary standards for sulfur dioxide by 1975. The control strategy developed by Maryland in the original plan (submitted January 28, 1972, hereafter referred to as the original plan) to meet the secondary standards for sulfur oxides was not approved because calculations in the plan regarding projected air quality for 1975 indicated that the secondary standards could not be met using reasonably available technology. Thus, an 18-month extension was granted.

The Maryland proposal states that certain developments have taken place since the original implementation plan was submitted, which alter projected sulfur oxide air quality significantly. These developments are given by Maryland as follows:

1. A new data base has been formulated for air quality due to changes in measurement and data reduction techniques.
2. More detailed information has been obtained on actual emission rates and dynamic effluent characteristics.
3. Considerable change in fuel burning sources and control plans are to be expected due to negotiations with emitters that had not previously been dealt with.
4. Improved capability has been developed with the computer used in the analysis.

The results of the model effort predict a maximum concentration of 35 ug/m^3 ; emissions of sulfur oxides will be reduced from 180,250 tons/year for the base year of 1971 to 90,996 tons/year by 1975.

Copies of the Maryland plan are available for public inspection during normal business hours at the Office of EPA, Region III, Curtis Building, Second Floor, 6th and Walnut Streets, Philadelphia, Pennsylvania 19106, and in the Office of the Maryland State Department of Health and Mental Hygiene, 601 N. Howard Street, Baltimore, Maryland 21201, and at the Freedom of Information Center, EPA, 401 M Street, S.W., Washington, D.C. 20460.

Interested persons may participate in this rulemaking by submitting written comments, preferably in triplicate, to the Regional Administrator, Environmental Protection Agency, Region III, Curtis Building, 6th and Walnut Streets, Philadelphia, Pennsylvania 19106. Relevant comments received within 30 days of this notice will be considered and receipt of comments will be acknowledged. Comments received will be available during normal working hours at the Region III offices and at the Freedom of Information Center. Authority: Section 110(a) of the Clean Air Act, as amended, 42 U.S.C. 1857c-5(a).

Date _____

Regional Administrator
Environmental Protection Agency

"Certified to be true copy of the original"
(THIS APPEARS ON TWO COPIES OF THE ORIGINAL DOCUMENT)

Appendix B

Transmittal Memorandum

SUBJECT: Transmittal of (Final) Federal Register Package

FROM: CPDD (General Non-TCP Associated Revisions - Rulemaking) or
OTLUP (TCP Associated Revisions - Rulemaking)

TO: Office of Air and Waste Management
Attention: Office of Program Management Operations

STATE:

AQCR:

ACTION: (Example - Tennessee Complex Source Regulation)

PROPOSAL PUBLISHED IN FEDERAL REGISTER FOR PUBLIC COMMENT ON:

PACKAGE RECEIVED BY (OAQPS, CPDD, SIB) ON:

DISCUSSION OF ISSUES: [brief discussion of any issues that have or
will slow processing of action]

cc: R.O.
DSSE
OTLUP



APPENDIX C

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

JAN 24 1975

SUBJECT: Proposed Standards and Regulations --
ACTION MEMORANDA FOR THE ADMINISTRATOR

FROM: Alvin L. Alm
Assistant Administrator
for Planning and Management

AA

TO: Assistant Administrators

The Administrator has requested that action memoranda accompanying proposed standards and regulations be prepared in a more consistent and concise format. The revised Standards and Regulations Manual promulgated by Mr. Train's memorandum of December 6, 1974 establishes this format and specifies the key issues which should be addressed. The attached outline is included in the Manual and should be adhered to in the preparation of future regulatory packages.

With regard to content, it is particularly important that action memoranda summarize the environmental economic and energy implications of the proposed action and of alternatives considered, as well as Federal, State and local resources required for implementation. In addition, memoranda should indicate the degree of public participation in the development of the regulations and any areas of concern which may have been identified.

I have asked the Steering Committee to review action memoranda accompanying future regulatory proposals and to return those that do not conform with the Manual to the originating office for appropriate revisions. To facilitate implementation I have forwarded copies of this memorandum to the working group chairmen for standards and regulations now under development.

Attachment

cc: Working Group Chairmen

OUTLINE FOR ACTION MEMORANDUM

Action Memoranda for the Administrator on proposed rulemaking activities should outline the full implications of the proposed action and follow the outline presented in this appendix.

The action memorandum should be as concise as possible and not exceed six pages. Appendices should be used liberally, however, to support the conclusions and recommendations made in the text of the memo.

Subject: (Title of the Proposed Action) -
ACTION MEMORANDUM

From: Lead Office AA

To: The Administrator

Thru: AX \

1. General Description of the Proposed Action

- a) Title and Statutory basis: State the title and the authority under which the action is being taken.
- b) Problem Addressed: Briefly explain the problem sought to be corrected by the proposed action.
- c) Recommended Course of Action: Briefly explain what the recommended action entails.
- d) Alternatives Considered and Why Rejected: List the major alternatives considered to remedy the problem and why these approaches were rejected.

2. Major Decision Issues

- a) Introductory sentence: Delineate the major issues to be discussed.

b) Discussion of Issues: (Repeat the steps below for each issue.)

(1) Statement of issue: State the first issue.

(2) Options with pros and cons for each: Separately state each option considered for resolution of the issue with its advantages and disadvantages.

(3) Recommendation with the rationale for the selected option (if one is chosen): Explain why the particular resolution of the issue is recommended over the other options available. If no recommendation is made, indicate that the Administrator must resolve the question.

3. Summary of Comments

a) Public Participation: List the entities who have been or will be requested to comment on the action.

b) Major Adverse Comments: Summarize the content of adverse comments received (and from whom they were made) and indicate how these were incorporated into the recommended action or why they were rejected.

c) Anticipated public reaction: Assess the degree of public acceptance anticipated.

4. Summary of the positive and negative environmental and non-environmental effects for the recommended action.

a) Cost and economic impacts: Describe the costs to industry of implementing the recommended action,

its potential economic repercussions, and the expected cost savings incurred by adopting this course of action.

- b) Intermedia effects: Explore both the beneficial and adverse impacts of the recommended action on air, water, solid waste, and noise pollution, as well as the potential effects on land use.
 - c) Programmatic and resource consequences: Discuss the required Agency, State and local resource requirements necessary to implement or administer the recommended action.
 - d) Energy consequences: Indicate any irreversible commitments of natural resources and expected energy savings from adoption of the recommended action.
 - e) Significant technical details: Explore any significant consequences of adopting a particular methodology in the development or implementation of the recommended action.
5. Recommendation: Indicate the action recommended to the Administrator.

Voluntary Environmental Impact Statements:

Where required, Voluntary Environmental Impact Statements shall be prepared in accordance with detailed instructions to be promulgated by the Office of Federal Activities shortly.

OK

Inflation Impact Statements:

OMB is expected to promulgate soon detailed instructions on Inflation Impact Statements as well as a description of the types of regulatory activities for which such documents will be required.

Appendix D - Preamble

Title 40 - Protection of Environment

CHAPTER I - ENVIRONMENTAL PROTECTION AGENCY

Subchapter C - Air Programs

PART 52 - APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

Approval of Washington Implementation Plan Revision

Complex (Indirect) Sources

On May 31, 1972 (37 FR 10842), pursuant to Section 110 of the Clean Air Act and 40 CFR Part 51, the Administrator of the Environmental Protection Agency (EPA) approved, with specific exceptions, the State of Washington plan for implementation of the national ambient air quality standards. Pursuant to a Court ruling by the United States Court of Appeals for the District of Columbia in the case Natural Resources Defense Council v. Environmental Protection Agency, 475 F. 2d 968 (D.C. Cir. 1973), the Administrator disapproved all State plans with respect to maintenance of standards.

On June 18, 1973 (38 FR 15834), the Administrator promulgated requirements directing States to submit implementation plan revisions by August 15, 1973, to provide for preconstruction review and approval of indirect sources of air pollution to insure maintenance of standards. The State of Washington submitted amendments to the Washington Administrative Code (WAC) as a revision to the plan, in accordance with requirements of 40 CFR Part 51, but subsequently withdrew that submittal. On February 25, 1974 (39 FR 7270), pursuant to Section 110 of the Clean

Air Act, 40 CFR Part 51, and an order of the U.S. Court of Appeals for the District of Columbia, the Administrator sustained disapproval of the Washington plan and promulgated regulations for the review of indirect sources of air pollution to insure maintenance of national ambient air quality standards.

On June 14, 1974, the State of Washington re-submitted to EPA amendments to WAC 18-24 to provide for preconstruction review and approval of complex (indirect) sources of air pollution as a revision to the State implementation plan. Public hearings were held by the State on May 1 and May 3, 1974, in the cities of Spokane and Seattle, respectively. On July 17, 1974 (39 FR 26167), the amendments to WAC 18-24 were published as proposed rulemaking and opportunity for public comment was provided.

The amendments to WAC 18-24 provide for preconstruction review of new or modified parking facilities which will provide 250 or more spaces in King, Pierce, Snohomish, Clark and Spokane counties and 1,000 or more spaces in all other areas of the State. New highways designed for use by 20,000 or more vehicles per day, modified highways designed to allow increased vehicle usage by 10,000 or more vehicles per day, new airports which will have 50,000 or more regularly scheduled operations per year or use by 1,600,000 passengers per year, and airport modifications which will increase regularly scheduled operations by 50,000 or more per year or use by 1,600,000 passengers per year are also subject to the amended regulations.

Administrative procedures to implement these amendments (which contain guidelines for developers) have been developed and are on file at the State Department of Ecology (DOE).

Three separate comments were received from the public on the proposed revision to the State implementation plan. Two comments were from private businesses, and one was from a local government. Consideration was given all comments in making the final decision to approve the State regulation as part of the State Implementation Plan.

Two of these comments suggested that the effective date of the regulations, August 15, 1974, places an unjust burden upon applicants for obtaining local jurisdiction permits because of increased costs of delayed projects. This comment was carefully considered; however, the Administrator was presented with no evidence that the costs would be unduly severe when compared with the benefit to the public health from initiating these review procedures in an expeditious manner. Moreover, Section 116 of the Clean Air Act precludes the Administrator from disapproving a State submission merely because it is more stringent than comparable federal requirements.

One comment pointed out that complex source reviews are just one part of the total concept of land use planning. The comment proposed that since many land use measures are established at the local government level the State implementation plan regulations should authorize the delegation of authority to local governments to carry out the provisions of the complex source review regulations. The State of Washington has indicated its interest to delegate review authority to local air pollution control agencies. The Washington Clean Air Act allows DOE to delegate authority only to local air pollution control agencies. The Administrator agrees that complex source review should be incorporated in general

land use planning and encourages cooperation between the State, local governments and local air pollution control agencies on all complex source projects.

As proposed in the July 17, 1974, Federal Register notice of proposed rulemaking, approval of the State of Washington's complex source review regulations enables the Administrator to remove the requirements for federal review of new or modified indirect sources in the State. Therefore, the Administrator is revoking 40 CFR 52.2495, promulgated February 25, 1974 (39 FR 7270).

In addition, because the State regulation provides for a sufficiently stringent review of new and modified parking facilities in the areas of the State subject to the promulgated transportation control plan (38 FR 32688, November 27, 1973), the Administrator today is also removing those requirements of the promulgated parking supply management regulation which require federal review of new or modified parking facilities of 50 or more spaces in the counties of King, Pierce, Snohomish, Kitsap, and Spokane, outside the Seattle and Spokane central business districts (CBD). Those requirements of the parking management regulation which relate to the CBD, i.e., reservation of parking spaces for carpool vehicles, reporting requirements of the cities regarding the number of parking spaces, and the prohibition of an increase in non-residential parking spaces, remain in effect. Applications for parking in the Seattle or Spokane CBD's are subject only to the EPA regulation due to a specific exception in the Washington regulation. The amended parking supply management regulation (40 CFR 52.2486) of the Washington transportation control plan is presented below.

The major effects which result from approval of the State regulation and the revoking or amending of federal regulations are discussed below. In the Puget Sound Region (subject to the Transportation control plan), Kitsap County is no longer subject to the same parking facility review criteria as the other three counties of the Region; in the counties of King, Pierce, Snohomish, and Spokane, the threshold for review of new or modified parking facilities changes from 50 spaces (federal regulation) to 250 spaces (State regulation). In Clark County of the Portland-Interstate Region, the threshold for review of parking facilities is decreased from 1,000 spaces (federal regulation) to 250 spaces (State regulation). In addition, the effective date of the State regulation is August 15, 1974, whereas the federal regulations would have been applicable to sources the construction or modification of which commenced after December 31, 1974.

The State regulatory requirements for the review of new or modified airports are as stringent as federal requirements. The State regulation is more restrictive with respect to review of new or modified highway sections in that such review is required statewide while EPA requirements applied only in Standard Metropolitan Statistical Areas. With the exception of the change in size of parking facilities subject to review in the two transportation control plan Regions of the State, the State regulation is more stringent, both in terms of its geographical coverage and its effective date, than the corresponding federal regulations. Based upon experience in parking facility review and additional research conducted since the federal parking regulations were promulgated, EPA has found parking facilities with a capacity of 250 motor vehicles to be of reasonable size for meaningful air quality analysis, except in special circumstances.

The Administrator finds good cause for making this approval effective immediately since the Washington regulation is now in effect and it serves no useful purpose to defer revoking the federal indirect source regulation or amending the parking management regulation.

The proposed revision has been reviewed by EPA for compliance with 40 CFR Part 51 and is found to be approvable except that the necessary public comment procedures were not included in regulatory form. The Administrator is, therefore, promulgating a corrective regulation for Washington relating solely to public comment procedures. Since these procedures are clearly required by 40 CFR 51.18 and the regulation merely gives legally enforceable form to the procedures spelled out by the State in its submission, the Administrator finds good cause for promulgating such a correction without having proposed it. An evaluation report of the adequacy of the State regulation is available for public inspection at the Region X Office of the EPA, 1200 Sixth Avenue, Seattle, Washington 98101 and at the Freedom of Information Center, EPA, 401 M Street, S.W., Washington, D.C. 20460. Authority: (Sections 110(a)(2)(B), 110(c) and 301(a) of the Clean Air Act, as amended (42 U.S.C. 1857c-5(a)(2)(B), 1857c-5(c), and 1857g(a).)

Date _____

Administrator

Appendix E - Regulatory Section*

Subpart WW of Part 52 of Chapter 1, Title 40, of the Code of Federal Regulations is amended as follows:

Subpart WW - Washington

1. § 52.2470 [Amended]

Paragraph (c)(3) is amended by adding the date, June 14, 1974, in proper chronological order.

2. Section 52.2486 is revised to read as follows:

§ 52.2486 Management of parking supply.

(a) Definitions:

(1) "Parking facility" (also called "facility") means a lot, garage, building or structure, or combination or portion thereof, in or on which motor vehicles are temporarily parked.

(2) [Reserved]

* The designation of the Regulatory section as appendix E is made for demonstrative purposes. In reality this portion is not separate from the preamble. The page numbers follow in sequence, although a new page is begun for the Regulatory Section.

(3) "Construction" means fabrication, erection, or installation of a parking facility, or any conversion of land, buildings, or structures, or portions thereof, for use as a facility.

(4) "Modification" means any change to a parking facility that increases or may increase the motor vehicle capacity of, or the motor vehicle activity associated with, such parking facility.

(5) "Commence" means to undertake a continuous program of on-site construction or modification.

(6) "Parking space" means any area or space below, above, or at ground level, open or enclosed, on-street or off-street, that is used for parking one motor vehicle at any time.

(7) "Residential parking facility" means a parking facility the use of which is limited exclusively to residents (and guests) of a residential building or group of buildings under common control and in which no commercial parking is permitted.

(8) "Seattle central business district" means the area enclosed by Yesler Way, the I-5 freeway, Eighth Avenue, Virginia Street, and the Alaska Way Viaduct. Streets forming boundaries (excluding the I-5 freeway and the Alaska Way Viaduct) shall be part of the central business district (CBD).

(9) "Spokane central business district" means the area enclosed by Trent Avenue, Monroe Street, Third Avenue, and Division Street. Streets forming boundaries shall be part of the central business district.

(b) This section shall be applicable in the Seattle and Spokane CBD's.

(c) [Reserved]

- (d) [Reserved]
- (e) [Reserved]
- (f) All applications for approval under this section shall include the following information:
 - (1) Name and address of the applicant.
 - (2) Location and description of the parking facility.
 - (3) A proposed construction schedule.
 - (4) [Reserved]
 - (5) The total motor vehicle capacity before and after the construction or modification of the facility.
 - (6) Additional information, plans, specifications, or documents required by the Administrator.
 - (g) [Reserved]
 - (h) [Reserved]
 - (i) Each application shall be signed by the owner or operator of the facility, whose signature shall constitute an agreement that the facility shall be operated in accordance with the information submitted in the application and with applicable rules, regulations, and permit conditions.
 - (j) [Reserved]
 - (k) [Reserved]
 - (l) There shall be no increase in the number of non-residential parking spaces within the Seattle and Spokane CBD above the number present as of November 19, 1973. Any parking facility which provides or would provide vehicular ingress or egress to or from a street forming a

boundary or a CBD shall be considered included within such CBD. Any parking facility beneath a street forming a boundary shall be considered to be included within such CBD.

(m) On a semiannual basis, beginning February 15, 1974, the city of Seattle and the city of Spokane shall report to the Administrator the total number of non-residential and the total number of residential on-street and off-street parking spaces in their respective CBD's. Thereafter, such cities shall report any reduction in the number of such parking spaces to the Administrator.

(n) No person or entity, after November 19, 1973, shall commence construction or modification or any new non-residential parking facility in the Seattle or Spokane CBD, nor shall any person or entity take any action having the effect of creating new non-residential parking spaces in such CBD, unless and until such person or entity has obtained from the Administrator or from an agency approved by the Administrator a permit stating that construction, modification, or enlargement of such facility will be in compliance with paragraph (1) of this section.

(o) By May 31, 1974, each owner or operator of any parking facility located within the Seattle and Spokane CBD shall reserve 10 percent of the parking spaces in such facility for vehicles transporting three or more occupants between the hours of 7:00 a.m. to 7:00 p.m., Monday through Friday, excluding legal holidays. On or before March 1, 1974, each such owner or operator shall submit to the Administrator a detailed compliance schedule showing the steps it will take to assure compliance with this paragraph.

(p) The city of Seattle and the city of Spokane shall report to the Administrator on a semiannual basis beginning August 15, 1974, the average daily occupancy of the spaces reserved for vehicles transporting three or more occupants.

3. Section 52.2495 is revised to read as follows:

§ 52.2495 Review of new sources and modifications.

(c) The requirements of § 51.18(h) of this chapter are not met since the State's procedures for providing for public comment are not legally enforceable.

(d) Regulation providing for public comment. (1) Prior to approval or disapproval of the construction or modification of an indirect source, the Director shall:

(i) Make a preliminary determination whether the indirect source should be approved, approved with conditions or disapproved;

(ii) Make available in at least one location in each region in which the proposed indirect source would be constructed, a copy of all materials submitted by the owner or operator, a copy of the Director's preliminary determination, and a copy or summary of other materials, if any, considered by the Director in making his preliminary determination; and

(iii) Notify the public, by prominent advertisement in a newspaper of general circulation in each region in which the proposed indirect source would be constructed, of the opportunity for public comment on the information submitted by the owner or operator and the Director's preliminary determination on the approvability of the indirect source.

(2) A copy of the notice required pursuant to this paragraph shall be sent to the Administrator through the appropriate regional office; to all other State and local air pollution control agencies having jurisdiction in the region where the indirect source will be located; and to any other agency in the region having responsibility for implementing the procedures required under Chapter of the Washington rules and regulations.

(3) Public comments submitted in writing within 30 days of the date such information is made available shall be considered by the Director in making his final decision on the application.

Appendix F - Rationale for Approval/Disapproval

EVALUATION REPORT
FOR THE STATE OF WASHINGTON
COMPLEX (INDIRECT) SOURCE REVIEW REGULATION

Prepared By

ENVIRONMENTAL PROTECTION AGENCY

REGION X
1200 SIXTH AVENUE
SEATTLE, WASHINGTON

SEPTEMBER 1974

§ 51.4 Public hearing

Summary of requirement - three major requirements must be met as follows:

(1) Certification that the public hearing was announced at least 30 days prior to the date of such hearings.

(2) Subject proposal must be available for review in at least one location in each region (AQCR, AQMA) to which it applies, and

(3) Certification that the public hearing was held and that a record is available for inspection by the Administrator upon request.

§ 51.5 Submission of plans

All regulatory changes to the SIP (except compliance schedules) must be submitted by the governor or his designee. All other changes may be submitted by the appropriate control agency.

June 10, 1973,
Federal Register Requirements
For Indirect Source Review

§ 51.11 Legal authority.

(a)(4) Legal authority required to prevent construction, modification, or operation of an indirect source of any pollutant at any location which will prevent attainment and maintenance of standards.

§ 51.18 Review of new sources and modifications.

(a) Plan must have legally enforceable procedures which will enable state or local agency to determine whether construction or modification of direct or indirect source will result in violation of control strategy or interfere with attainment or maintenance of standards.

(b) Procedure must include means by which state or local agencies can prevent construction or modification of source which will interfere with control strategy or attainment and maintenance of standards.

(c) Procedure must provide for submission by source owner or operator of information sufficient to permit evaluation of consistency with control strategy and standards attainment and maintenance.

(d) Procedure must provide that approval of construction or modification shall not affect the responsibility of the owner or operator to comply with applicable portions of the control strategy.

(e) Responsible state or local agency must be identified. If responsibility does not rest with air pollution control agencies, consultation with such agencies must be provided.

(f) Procedures must identify sources subject to review and the basis for determining which sources shall be subject to review.

(g) Plan shall include administrative procedures which will be followed in determining whether a source may be constructed or modified.

(h)(1) Procedures must include provisions for public comment, prior to agency decision on the approvability of a proposed indirect source, on information submitted by source owner or operator and on agency analysis of information.

(h)(2)(i) Materials, including information submitted by source owner or operator and agency analysis of proposed indirect source, must be available at one location in region.

(h)(2)(ii) Procedure must provide for 30-day period for submittal of public comment (or other period approved by the Administrator--see (h)(3)).

(h)(2)(iii) Notice of source information and agency analysis must be given by prominent advertisement in affected region.

(h)(4) Notice of materials available for public comment must be sent to Regional Office and appropriate state and local agencies.

Washington Complex Source Regulation (WAC 18-24)
Evaluation of Plan Compliance with Requirements of 40 CFR Part 51

A. Section 51.4

Public hearings were held on May 1, 1974 and May 3, 1974 in the cities of Spokane and Seattle respectively. The requirements for proper notice and availability of materials were satisfied.

B. Section 51.5

The subject plan was officially adopted on June 12, 1974, by the Department of Ecology (DOE) and was officially submitted to EPA by Governor Evans on June 14, 1974.

C. Section 51.11

The requirements of this section are satisfied as indicated in the November 8, 1973 legal opinion of the Assistant Attorneys General to the Director of DOE and approved by EPA on February 25, 1974 (39 FR 7284).

D. Section 51.18(a)

The requirements of this section are satisfied. WAC 18-24-090(2) and (4) provides that the DOE may request information needed to evaluate the effect of a proposed complex source. WAC 18-24-090(5) references the procedures (on file with the Department) the DOE will use to determine the effect of operation or use of a complex source on ambient air quality; these procedures are acceptable to EPA.

E. Section 51.18(b)

Requirements of this section are satisfied. WAC 18-24-090 5(b)(ii) provides that the Department shall issue an order of prevention upon finding that operation, maintenance, or use of a complex source will prevent attainment of

standards or will interfere with achievement of a provision of the State Implementation Plan. WAC 18-24-060 specifies that DOE may delegate to local air pollution control agencies the performance and/or enforcement of the program if the local agency provides demonstration of the capability to carry out provisions of WAC 18-24. Section G of the State Implementation Plan discusses the adequacy of local air pollution control agency legal authority to carry out provisions of the Plan.

F. Section 51.18(c)

Requirements of this section are satisfied. WAC 18-24-090(2) describes the minimum requirement for submittal of information by an applicant. WAC 18-24-090(4) provides that the Department may request any additional information necessary to evaluate the impact of the source, including but not limited to, nature and amounts of emissions and the design, construction, operation and maintenance of the complex source as it relates to motor vehicle usage.

G. Section 51.18(d)

The requirements of this section are satisfied by WAC 18-24-110 which specifies that an order of approval shall not affect an owner's responsibility to comply with all applicable portions of the Washington Clean Air Act and the State Implementation Plan.

H. Section 51.18(e)

The requirements of this section are satisfied by WAC 18-24-030 which extends the DOE statewide jurisdiction to control motor vehicle emissions to the regulation of the construction and modification of complex sources. WAC 18-24-060 provides that the DOE may delegate provisions of the plan to local air pollution control agencies.

I. Section 51.18(f)

The requirements of this section are satisfied by WAC 18-24-020(2) which identifies examples of the types of facilities subject to review and by WAC 18-24-070 which identifies the size and location criteria which determine applicability of the regulation to sources. On September 11, 1974, the State submitted materials which discuss the basis for determination of which facilities shall be subject to review.

J. Section 51.18(g)

The requirements of this section are met since the Department has such procedures on file (WAC 18-24-090(5)) and has provided EPA with a copy of these procedures.

K. Sections 51.18(h)(1), (2)(i), (2)(ii), (2)(iii), and (4)

The requirements of these sections are satisfied in WAC 18-24-090(5)(a) which specifies that the Department shall, by notice published in a newspaper of general circulation in the county in which the source will be located, announce a 30-day public review and comment period on the submitted application and the Department's analysis and proposed determination. The materials will be made available in at least one location in the county (counties) in which the source will be located and notification will be made to EPA and appropriate State and local agencies.

WASHINGTON COMPLEX SOURCE REVIEW PLAN COMPLIANCE WITH EPA REVIEWER COMMENTS

1. COMMENT -- Requirements of 51.11(f) must be met either through WAC 18-24-060 or elsewhere in the State plan.

Disposition: Pages G-4 and G-5 of the State Implementation Plan discuss the adequacy of activated local air pollution control agency legal authority to carry out provisions of the plan, and page G-15 of the plan specifies that the DOE can assume implementation or enforcement of plan provisions where a local agency fails to adequately carry out a program.

2. COMMENT -- Confusion may arise because the regulation contains separate definitions for "commence construction" and for "construction" and "modification". Suggest use of just one definition for "commence construction" and "commence modification".

Disposition: Although this suggestion was not incorporated in the adopted regulation, there is no basis in § 51.18 for disapproval of the plan in this regard.

3. COMMENT -- WAC-18-24-070(2)(e) should include the parameter of number of passengers served as well as number of airline operations.

Disposition: The adopted regulation includes the suggested parameter in WAC 18-24-070(2)(d).

4. Comment -- Concerns were expressed about possible loopholes in WAC 18-24-090 (4)(b)(i) and (iii), and it was suggested that in paragraph (ii), the word "only" be deleted and in paragraph (i), the word "may" be changed to "shall".

Disposition: The reviewer's concerns were not clearly expressed, but suggested language changes for this section were made to DOE; some suggested changes were adopted, others were not. However, there is no basis in § 51.18 for disapproval of the plan in this regard.

5. COMMENT -- WAC 18-24-020(2) should include review of all source categories included in the EPA promulgated regulation.

Disposition: 40 CFR 51.18 sets forth requirements for plan development and there is no requirement for State plans to duplicate the EPA promulgated regulation. However, the DOE regulation indicates that the requirements of the State plan are not limited to the types of facilities cited as examples in WAC 18-24-020(2).

6. COMMENT -- Definition of modification (WAC 18-24-020(8)) should be consistent with that contained in § 52.01(d).

Disposition: While some suggestions concerning definitions were forwarded to DOE, this suggestion was not forwarded, since there is no requirement in 40 CFR 51.18 that State plans must duplicate the Federal regulation. In addition, the definition of modification in § 52.01(d) refers to stationary sources.

7. COMMENT -- WAC 18-24-070(2)(a) and (b) should include provisions for covering modified sources.

Disposition: WAC 18-24-070(2)(a) of the adopted regulation covers modified sources. Paragraph 2(b) has been deleted from the final regulation.

8. COMMENT -- A definition of "operations" (regularly scheduled airline) should be included in the regulation.

Disposition: OGC indicated there is no requirement concerning definitions that must be included in a State plan in order for the plan to be approvable.

9. COMMENT -- WAC 18-24-090(4)(b)(i) should clearly indicate that conditions of operation levied by the Department must be legally enforceable by the State and EPA.

Disposition: Although no changes were made in this section in the adopted regulation (WAC 18-24-090(5)(b)(i)), it is unnecessary to restate that conditions are enforceable by the State and EPA since by virtue of their being issued pursuant to the State Implementation Plan, conditional permits are enforceable by the State. Pursuant to the Clean Air Act, EPA can assume federal enforcement of State Implementation Plans where necessary.

10. COMMENT -- In addition to formally submitting the adopted plan, the State must submit to EPA the basis for determining which facilities are subject to review.

Disposition: On September 11, 1974, the State submitted materials which discuss the basis for determination of which facilities shall be subject to review.

11. Other clarifying suggestions were made to the DOE and needed corrections of minor errors noted. These corrections were made in the adopted regulation and many of the clarifying suggestions were incorporated.

Appendix G: Public Comment Acknowledgement Letter



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

Office of Air Quality Planning and Standards
Research Triangle Park, North Carolina 27711

City Wide Industries
Anywhere
Any Town, U.S.A.

Dear Sir:

This is to acknowledge receipt of your letter of July 27, 1973, containing comments on the proposed changes concerning nitrogen dioxide which appeared in the Federal Register (XX FR XXXX) X/X/XX. We are in the process of assembling all the comments received on this issue so we can, after due consideration, make such changes as may be necessary in the final promulgation.

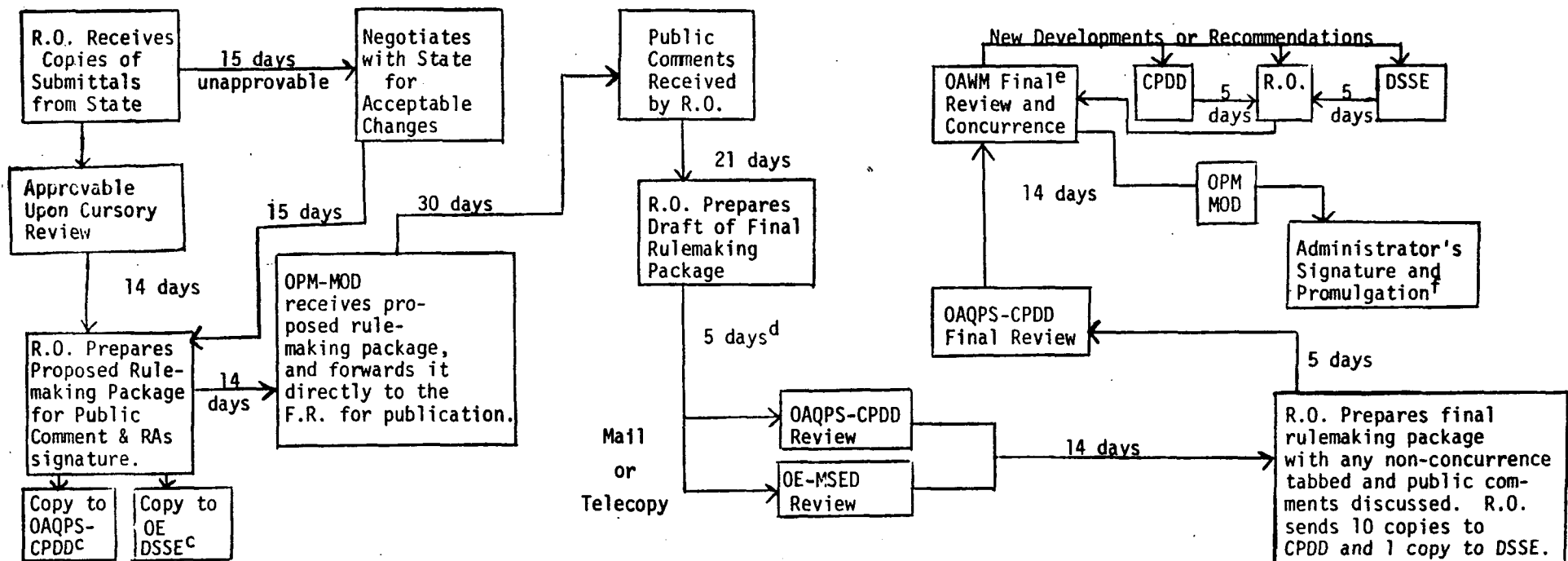
We sincerely appreciate your prompt attention in submitting comments.

Sincerely yours,

Richard G. Rhoads, Chief
Standards Implementation Branch
Control Programs
Development Division

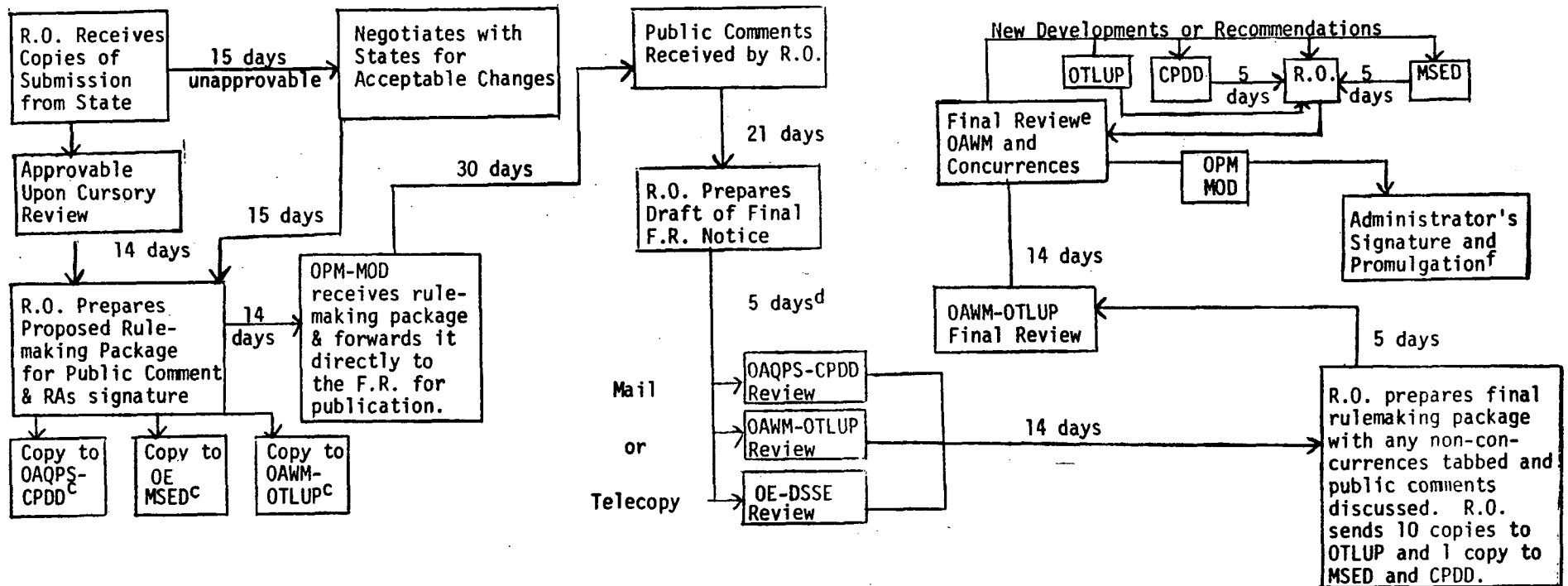
cc: R. Mullins
J. Schueneman

Figure 2. PROCEDURES FOR APPROVAL/DISAPPROVAL OF REVISIONS OF SIP's^{a,b}
EXCEPT THOSE INVOLVING TRANSPORTATION CONTROL MEASURES



- If the State submission contains mostly TCP measures, follow the procedures outlined in Figure 3.
- The days given represent the time in calendar days necessary to prepare tasks described in the following box.
- Copy of revision and submittal included. Reviewer discusses proposal with R.O. if necessary, by telephone and confirms by memorandum to R.O. with copies to other reviewing offices.
- Reviewers must telephone concurrences or non-concurrences within 5 days of reception; confirm by memorandum to R.O. with copies to reviewing office. If differences cannot be resolved, 14 days are allowed to prepare the non-concurrence memorandum.
- Concurrences must be received from OPM-MOD, OE, OGC, OPM, and OAWM.
- After promulgation, R.O. sends copies of approved SIP changes to the Freedom of Information Center.

Figure 3. PROCEDURES FOR APPROVAL/DISAPPROVAL OF REVISIONS OF SIP's^{a,b}
INVOLVING TRANSPORTATION CONTROL MEASURES



- If the State submission contains some Non-TCPs control measures DSSE is included in the review.
- The days given represent the time in calendar days necessary to prepare tasks described in the following boxes.
- Copy of revision or submittal included. Reviewer discusses proposal if necessary by telephone and confirms by memorandum to R.O. with copies to other reviewing offices.
- Reviewers must telephone concurrence or nonconcurrence within 5 days of reception and confirm by memorandum to R.O. with copies to other reviewing offices. If differences cannot be resolved, 14 days are allowed to prepare the nonconcurrence memorandum.
- Concurrences must be received from OPM-MOD, OE, OGC, OPM, and OAWM.
- After promulgation, R.O. sends copies of approved SIP changes to the Freedom of Information Center.